IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. [redacted] 34

WILLARD UPHAUS,

Appellant,

v.

LOUIS C. WYMAN, Attorney General,
State of New Hampshire,

Appellee.

On Appeal From the Supreme Court of New Hampshire

JURISDICTIONAL STATEMENT

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CITATIONS

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JURISDICTIONAL STATEMENT

Appellant, Willard Uphaus, appeals from the order of the Supreme Court of New Hampshire, entered on November 15, 1957, affirming and reinstating the final judgment of the said court, entered on February 28, 1957 and vacated by this Court on October 14, 1957, 355 U. S. 16. The said final judgment of the state court had sustained a lower court judgment of contempt sentencing appellant to indefinite imprisonment for refusing to turn over to appellee a list of guests at a summer camp, and directed him to turn over to appellee his private correspondence with and concerning guest lecturers at the camp.

Appellant submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial federal questions are presented.

Opinions Below

The first opinion of the Supreme Court of New Hampshire was rendered on February 28, 1957 (*infra* p. 17) and modified upon a motion for rehearing on March 27, 1957, *infra* p. 34. As modified, the opinion is reported at 100 N. H. 436, 130 Atl. 278.

Following this Court's *per curiam* opinion at 355 U. S. 16, the Supreme Court of New Hampshire rendered an opinion on November 15, 1957, *infra* p. 15.

An earlier motion for rehearing in the state Supreme Court had been denied on July 9, 1957, without opinion. There was no opinion in the Superior Court of the state.

Jurisdiction

This proceeding was brought by appellee, Louis C. Wyman, Attorney General of the State of New Hampshire, in the Superior Court for Merrimack County, New Hampshire, pursuant to the Revised Laws of New Hampshire (1942) Chapter 307, §§ 18 and 19 (now RSA 491, §§ 19 and 20). Its purpose was to compel appellant to comply with certain subpoenas *duces tecum* issued by appellee in the course of an investigation conducted by him under a "Joint Resolution Relating to the Investigation of Subversive Activities," New Hampshire Laws of 1953, Chapter 307,[1] which delegated to the Attorney General power to investigate violations of the Subversive Activities Act of 1951, New Hampshire Laws of 1951, Chapter 193, and NHRSA, Ch. 588[2] and "to determine whether subversive persons as defined in said Act are presently located within this state."

[1] As extended, New Hampshire Laws of 1955, Chapter 197.

[2] New Hampshire Revised Statutes Annotated, Chapter 588.

The statutes are set forth in full in the jurisdictional statement in *Uphaus* v. *Wyman*, Oct. Term 1957, No. 332, pages 33-45, to which this Court is respectfully referred. The sections most significant in the light of this Court's opinion in *Sweezy* v. *State of New Hampshire*, 354 U. S. 234, are set forth in the Appendix (*infra*, pp. 34-36).

After hearing, the Superior Court ordered appellant to produce his guest lists and, upon his refusal, adjudged him in contempt of court and ordered him committed to the County Jail until purged of contempt (R. 2, 68).[3] The Court reserved and transferred to the state Supreme Court without ruling the issue of appellant's duty to produce correspondence with or concerning guest speakers at appellant's camp (R. 1).

Appellant excepted to the Superior Court's adverse rulings and appealed to the state Supreme Court. On February 28, 1957 that Court overruled appellant's exceptions, affirmed the judgment of contempt of the Superior Court and ordered appellant to produce the aforesaid correspondence (*infra*, pp. 17-33).

A timely motion for rehearing was made and denied on March 27, 1957, the state Supreme Court, however, modifying the opinion previously rendered by it (*infra*, p. 34).

Notice of appeal to this Court was filed on April 26, 1957 with the state Supreme Court. Upon this Court's decision in *Sweezy* v. *State of New Hampshire*, 354 U. S. 234, a second motion for rehearing of this case was filed on June 25, 1957, calling the state court's attention to the *Sweezy* decision. This motion for rehearing was denied by the state court on July 9, 1957, without opinion, *infra*, p. 16.

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[3] "R" refers to the Reserved Case, constituting the record on appeal to the state Supreme Court under New Hampshire practice, which was filed upon the earlier appeal herein, *Uphaus* v. *Wyman*, No. 332, October Term, 1957, 355 U. S. 16.

Upon the appeal to this Court in *Uphaus* v. *Wyman*, No. 332, October Term, 1957, this Court entered an order, *per curiam* on October 14, 1957, 355 U. S. 16, vacating the state court's judgment with costs, and directing that the "case is remanded to the Supreme Court of New Hampshire for consideration in light of *Sweezy* v. *New Hampshire*, 354 U. S. 234."

Appellee then moved in the state Supreme Court for reinstatement and affirmance of its judgment of February 28, 1957. On November 15, 1957 the motion was granted and an order entered (*infra*, p. 37). Notice of appeal to this Court from the order was filed with the said state court on December 13, 1957; an amended Notice of Appeal was filed in the state court on January 2, 1958.

Jurisdiction of the appeal is conferred on this Court by 28 U. S. C. §§ 1257 (2) and 2101 (e). The following cases sustain the jurisdiction of this Court: *Uphaus* v. *Wyman*, 355 U. S. 16; *Hamilton* v. *Regents of the University of California*, 293 U. S. 245; *McCollum* v. *Board of Education*, 333 U. S. 203; *Wieman* v. *Updegraff*, 344 U. S. 183; *Garner* v. *Los Angeles Board*, 341 U. S. 716; *Slochower* v. *Board of Higher Education*, 350 U. S. 551, rehearing denied, 351 U. S. 944.

Statutes Involved

The validity of the "Joint Resolution Relating to the Investigation of Subversive Activities", New Hampshire Laws, 1953, Chapter 307, as extended, Laws, 1955, Chapter 197, and of the Subversive Activities Act of 1951, New Hampshire Laws of 1951, Chapter 193, NHRSA, Chapter 588, is involved, *infra*, pp. 34-36.

Questions Presented

(1) Whether Chapter 307, New Hampshire Laws of 1953, extended by Chapter 197, New Hampshire Laws of 1955, as construed to require the delivery to the Attorney

General as agent of the state legislature of lists of appellant's guests at the New Hampshire World Fellowship Center and to require the delivery of the appellant's correspondence with speakers at the said center, under penalty of indefinite confinement:

(a) Violates appellant's rights of free speech and association under the First and Fourteenth Amendments to the Constitution of the United States.

(b) Is an unreasonable search and seizure in violation of appellant's right to due process under the Fourth and Fourteenth Amendments.

(c) Is so vague and indefinite that it deprives the appellant of due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

(d) Is arbitrary and unreasonable and thereby deprives the appellant of due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

(2) Whether Chapter 307, New Hampshire Laws of 1953, as extended, construed as above set forth, violates Article VI of the Constitution of the United States in that it purports to deal with matters within the exclusive power of the Federal Government and with respect to which the Federal Government has already legislated to the exclusion of the state legislation.

(3) Whether the reliance by the Supreme Court of New Hampshire upon so called "subversive lists" compiled by the Attorney General of the United States and the Committee on Un-American Activities of the House of Representatives is arbitrary and unreasonable, violates his rights of free speech, assembly and association and deprives him of his privileges and immunities—all under the Fourteenth Amendment to the United States Constitution.

(4) Whether Chapter 307, New Hampshire Laws of 1953, as extended, construed and applied as set forth above, constitutes a bill of attainder in violation of Article I, § 9 of the Constitution of the United States.

(5) Whether the sentence of the New Hampshire Supreme Court, committing the defendant to imprisonment until he answer the questions put to him, constitutes cruel and unusual punishment within the Eighth and Fourteenth Amendments to the Constitution of the United States.

Statement of the Case

Appellant, Willard Uphaus, is the Executive Director of World Fellowship Inc. a charitable corporation organized under New Hempshire law, which operates a summer camp in that state. It is "a religious-motivated movement in the highest sense which seeks to bring together for fellowship and discussion the representatives of all faiths to the end that there may be peace, brotherhood and plenty for all men, women and children. It is a movement world-wide in its purpose" (*infra*, p. 18).

World Fellowship maintains accommodations for the public and it makes available to them guest lectures on topics of contemporary interest. As appellant testified: "Generally they fitted into a program and came to speak on questions that I had suggested; or if they were celebrated ministers or lawyers, they just talked of their life's experiences. They talked sometimes without a closely expressed topic. Sometimes they just sat down for an evening around the fire and expressed their—told stories of their lives, their interest and their problems" (R. 41, 442).

In 1953, appellee began his investigation under the "Joint Resolution Relating to the Investigation of Subversive Activities." See *Sweezy* v. *New Hampshire*, 354

U. S. 234. Appellant was one of the persons subpoenaed and interrogated by appellee—because he and some of his guest speakers were connected with organizations described as subversive by the United States Attorney General and by the House Committee on Un-American Activities (R. 31, 40, 51, 52).

Appellant answered all questions concerning his own associations denying, *inter alia* that he had ever been a Communist (R. 16) or knew anyone to be a Communist (R. 56) or that the forcible overthrow of government had ever been advocated at the camp (R. 37). He declined, however to produce pursuant to subpoenas *duces tecum* the names of guests at the camp, the names of its non-administrative employees such as cooks and ground-keepers and his private correspondence with or concerning the guest lecturers.

Thereupon, appellee filed a petition with the Superior Court of Merrimack County, New Hampshire to compel the production of this information. Such a petition, under New Hampshire practice, leads to a judicial hearing, independent of the administrative one before the Attorney General, in which the witness is again questioned and the Court after ruling upon pertinence and privilege may direct compliance and enforce its order by the contempt power (see R. 7, 9).

Appellant was called as a witness by appellee and again testified freely with respect to his own associations (Appendix, R. 16, 56, 67). He declined to produce the guest lists and private correspondence, relying upon his rights under the federal constitution. He raised the foregoing federal issues in the Superior Court in a manner set forth in detail in the original jurisdictional statement in No. 332 (pp. 7-10).

The Superior Court overruled appellant's objections (R. 54), denied his motion to dismiss the proceedings and directed him to produce the guest list (R. 39, 67). Upon

his refusal, appellant was adjudged in contempt of court and sentenced to imprisonment until he should purge himself of contempt (R. 2, 68).

The Superior Court ruled that appellant was not required to produce the names of his non-administrative employees (R. 39, 49). It did not rule upon appellant's duty to produce his personal correspondence with and concerning the guest lecturers. It transferred that matter, without ruling to the Supreme Court of New Hampshire. (R. 1, 53, 67).

Upon exceptions duly filed, the case was heard on appeal in the Supreme Court of New Hampshire. In that court, appellant again raised the federal constitutional issues in the manner described in the original jurisdictional statement.

The New Hampshire Supreme Court resolved the issues against appellant in its opinion of February 28, 1957 (*infra*, pp. 17-33). It relied repeatedly upon its earlier decision in *Wyman* v. *Sweezy*, 100 N. H. 103, later reversed by this Court in *Sweezy* v. *State of New Hampshire*, *supra*.

The state Supreme Court ruled directly against appellant in his attack upon the Attorney General's claim of authority from the legislature and in appellant's assertion of his rights under the First Amendment (*infra*, p. 28)—the two matters upon which this Court ruled in *Sweezy*, *supra*.

The state Supreme Court held that this Court's decision in *Pennsylvania* v. *Nelson*, 350 U. S. 497 did not render invalid the subpoenas *duces tecum* served upon appellant, noting that the same contentions were advanced before it without success in the *Sweezy* case (*infra*, p. 20). It disregarded appellant's arguments of lack of pertinency, again upon the basis of its decision in *Sweezy*. In this connection it relied upon the fact that appellant and some of the guest speakers were members of organizations on the United States Attorney General's list (*infra*, pp. 23, 27-28).

An appeal was taken to this Court and a jurisdictional statement was filed pursuant to its Rules. Appellant set forth in detail the reasons why in his view there were substantial federal questions and suggested that there be a summary reversal on the authority of the *Sweezy* case. No motion to dismiss or affirm was made by appellee. As indicated, *supra*, p. 4, this Court vacated the judgment below, remanding the cause to the State Court. That Court, one Judge dissenting in part, rendered the decision herein appealed from, which concluded with the following statement:

> "We have again reconsidered our opinion in the light of the Supreme Court's decision in the *Sweezy* case and we adhere to our original ruling in *Wyman* v. *Uphaus, supra*" (*infra*, p. 16).

The Questions Are Substantial

The original jurisdictional statement in No. 332, October Term, 1957, sets forth the substantial federal questions created by the state court's judgment, which, as reinstated, is the subject of this appeal. We respectfully refer this Court to that statement (pp. 10-14).

The state court's opinion of November 15, 1957, reinstating the judgment, sufficiently establishes that substantial federal questions are involved herein (*infra*, pp. 15-16).

1. Thus, the state court begins by noting that one of the two grounds of the decision in the *Sweezy* case—the vagueness of the statutes—was supported by four justices of this Court rather than by a majority. This is not the occasion for a discussion of whether a state court may disregard opinions in this Court for the reason given.[4] The

[4] Curiously, the appellee in *Wyman* sought rehearing here on the ground that the vagueness point was decided by "the majority of four members of this Honorable Court". (*Sweezy* v. *New Hampshire*, Oct. Term, 1956, No. 175; Petition for Rehearing, pp. 1, 3).

opinion of four members of the Court necessarily attests to the existence of substantial federal issues requiring adjudication here.

2. The state court then asserts that "the other reasons" which were joined in by six members of this Court "appear to us inapplicable to the facts presented by the case now pending" (*infra*, p. 16). These "other reasons" were the state's interference with what the Chief Justice described as "petitioner's liberties in the areas of academic freedom and political expression. * * *" *Sweezy* v. *State of New Hampshire*, 354 U. S. 234, 250. This is made explicit by the concurring opinion of Mr. Justice Frankfurter whom Mr. Justice Harlan joined, striking a balance between "two contending principles—the right of a citizen to political privacy, as protected by the Fourteenth Amendment, and the right of the State to self-protection" (*Id.* at 266-7).

The state court's most recent opinion fails to distinguish this case from *Sweezy*. Nor did the Attorney General's memorandum below on his motion to affirm the prior judgment suggest any distinction between the two cases.[5]

The investigations of appellant and of Dr. Sweezy were of the same character, for the same purposes, and made pursuant to the same statutes. Both witnesses denied membership at any time in the Communist Party.[6] In neither is there evidence of "a countervailing interest of the State" (*Id.*, at 265) or circumstances wherein a state interest would justify infringement of the right to engage in political expression and association (*Id.* at 251).

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[5] This memorandum appears in the transcript, pp. 4-6, filed with this Jurisdictional Statement.

[6] We do not suggest, of course, that a refusal to answer questions concerning Communist Party membership would have been unprotected by the Constitution.

Indeed, appellant's position is stronger in some respects than that of Dr. Sweezy. Thus, while the state court was unanimous in *Sweezy*, two of its judges dissented in part from the decision in appellant's case stating *inter alia*:

> "The order of the Court will operate as a deterrent upon the right of free speech and peaceable assembly guaranteed by the Constitution. *Wyman* v. *Sweezy, supra*, 113. See *Edgerton*, dissenting, *Barsky* v. *United States*, 167 F. (2d) 241, 254. Constitutional rights of the guests as well as of the witness are involved, and the Court need not restrict itself to consideration of the rights of the witness alone. See *Barrows* v. *Judson*, 346 U. S. 249; *Joint Anti-Fascist Refugee Comm.* v. *McGrath*, 341 U. S. 123, 187; Comment: Inquiry Into Political Activity, 65 Yale L. J. 1159, 1183-1189. The role of the guests with respect to the subject matter was not essentially different from that of the purchasers of pamphlets pertaining to national issues in the *Rumely* case *supra*. 'On a record such as this so slim a semblance of pertinency is not enough to justify inquisition violative of the First Amendment.' *Rumely* v. *United States*, 197 F. (2d) 166, 172. See also, *United States* v. *Rumely*, 345 U. S. 41, 46" (*infra*, p. 33).

The appellee's petition for rehearing of this Court's decision in the *Sweezy* case likewise shows that such differences as there are between the two cases might well be resolved in favor of appellant herein. Thus the appellee states that in *Sweezy* (a) the state was concerned with subversion "at a state supported institution" (p. 4), (b) the inquiry concerning Dr. Sweezy's lecture "does not concern other individuals" (*id. ibid.*), (c) the witness was asked "pertinent and relevant questions" (*ibid.*). The partial dissent below is an indication of the strength of Dr. Uphaus' case upon each of these points.

Finally, the state court in its opinion of November 1957 expresses its disagreement with this Court's decision in *Sweezy* and states:

> "It is difficult to determine from the several opinions in *Sweezy* v. *New Hampshire*, *supra*, the full implication of the decision of that case. However, it appears to rest substantially on the ground that our Legislature did not desire an answer to the questions asked the defendant Uphaus by the Attorney General. With due deference we are compelled to state that this concept is erroneous. The legislative history makes it clear beyond a reasonable doubt that it did and does desire an answer to these questions. Laws 1957, *c.* 347, approved July 11, 1957. We believe that the Legislature was entitled to the information sought. How this error on the part of the Supreme Court may have affected its opinions we do not know.
>
> We are loath to believe that under the Federal Constitution a state does not have the right to protect itself against subversion by inquiry of the sort provided for by our Legislature. The implications of such a conclusion are so grave and so at variance with what we have considered to be the settled law that we feel any ruling to this effect must come from another tribunal than ours" (*infra*, p. 16).

The statements are hardly an accurate statement of the "full implication" of this Court's opinion in *Sweezy*. Nor do we readily perceive how one legislature's action in 1957 can illuminate its predecessor's intention. This Court disregarded the same point made by appellee in his petition for rehearing in the *Sweezy* case.

It is premature to discuss these and other errors in the state court's most recent opinion. Under the circumstances we must adopt its suggestion that "another tribunal than ours" must act to determine the respective rights of state and citizen "under the Federal Constitution" (*infra*, p. 16). Its decision upon the federal issues involved is enough to establish this Court's jurisdiction.

Argument upon the merits is reserved for a proper occasion. We indicated upon the prior appeal that this Court might prefer to dispose of the case by summary reversal

(No. 332, Oct. Term, Juris. Stat. p. 4). Instead this Court deemed it appropriate merely to vacate the judgment below and to remand the case. The state Court's response to this Court's action now makes it necessary for the case to be disposed of upon the merits.

We respectfully suggest that one of the following procedures would be appropriate:

(a) This Court's summary vacatur of the order below and its dismissal of the contempt proceedings;

(b) The placing of this cause upon the calendar for disposition this Term.

In any event, the history of the case and the continuing effect of appellee's action upon appellant and others in New Hampshire make desirable the early consideration and determination of this appeal.

Dated, February 9, 1958.

Respectfully submitted,

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Appendix

Opinion of Supreme Court of New Hampshire

Merrimack
No. 4533.

LOUIS C. WYMAN, *Attorney General*,

v.

WILLARD UPHAUS.

November 15, 1957.

MOTION, for reinstatement of judgment. After the opinion in *Wyman* v. *Uphaus*, 100 N. H. 436 was filed, the defendant sought review by the Supreme Court of the United States. By order dated October 14, 1957, that court vacated the judgment of this court and remanded the case "for consideration in the light of *Sweezy* v. *New Hampshire*, 354 U. S. 234." *Uphaus* v. *Wyman*, 26 LW 3115. The plaintiff thereupon moved that the former judgment of this court be reinstated.

LOUIS C. WYMAN, Attorney General, *pro se*, for the motion.

NIGHSWANDER, LORD & BOWNES for the defendant, opposed.

PER CURIAM. In *Sweezy* v. *New Hampshire*, 354 U. S. 234, less than a majority of the Supreme Court of the United States was of the opinion that "use of the contempt power, notwithstanding the interference with constitutional rights, was not in accordance with the due process requirements of the Fourteenth Amendment" because of "a separation of the power of [the] legislature to conduct investigations from the responsibility to direct the use of that power." However the judgment of this court was there reversed because other members of the court sufficient to make a majority were of the opinion that there should be

reversal for other reasons which appear to us inapplicable to the facts presented by the case now pending. We therefore conclude that *Sweezy* v. *New Hampshire* is inconclusive of the issues in the pending case.

It is difficult to determine from the several opinions in *Sweezy* v. *New Hampshire, supra*, the full implication of the decision of that case. However, it appears to rest substantially on the ground that our Legislature did not desire an answer to the questions asked the defendant Uphaus by the Attorney General. With due deference we are compelled to state that this concept is erroneous. The legislative history makes it clear beyond a reasonable doubt that it did and does desire an answer to these questions. Laws 1957, c. 347, approved July 11, 1957. We believe that the Legislature was entitled to the information sought. How this error on the part of the Supreme Court may have affected its opinions we do not know.

We are loath to believe that under the Federal Constitution a state does not have the right to protect itself against subversion by inquiry of the sort provided for by our Legislature. The implications of such a conclusion are so grave and so at variance with what we have considered to be the settled law that we feel any ruling to this effect may come from another tribunal than ours.

Prior to the order of the United States Supreme Court, the defendant herein moved for a rehearing in reliance upon *Sweezy* v. *New Hampshire, supra*, which motion was denied on July 9, 1957. We have again reconsidered our opinion in the light of the Supreme Court's decision in the *Sweezy* case and we adhere to our original ruling in *Wyman* v. *Uphaus, supra*. The order is

Former result affirmed; case remanded.

DUNCAN, *J.*, dissented to the extent and for the reasons indicated in his former dissenting opinion reported in *Wyman* v. *Uphaus*, 100 N. H. 448-451, but otherwise concurred.

Opinion of Supreme Court of New Hampshire

Merrimack,
No. 4533.

LOUIS C. WYMAN, *Attorney General*

v.

WILLARD UPHAUS.

Argued December 4, 1956.
Decided February 28, 1957.

PETITION, by the Attorney General under R. S. A. 491:19, 20, for an order to compel compliance by the defendant with two subpoenas *duces tecum* served upon him in the course of a legislative investigation of subversive activities conducted by the Attorney General pursuant to resolutions appearing in Laws 1953, c. 307, and Laws 1955, c. 197.

A similar petition was previously dismissed for want of personal service upon the defendant within the jurisdiction. *State* v. *Uphaus*, 100 N. H. 1. Such service now having been had, the Attorney General seeks to compel compliance with a summons issued for the taking of evidence by him on August 31, 1955, as well as with the summons issued for the witness' appearance before him on September 27, 1954. See *State* v. *Uphaus*, *supra*, 3. By the subpoenas in question the petitioner sought to require the witness to produce guest registrations at the New Hampshire World Fellowship Center at Albany, New Hampshire for the 1954 and 1955 seasons; to disclose the names of employees at the Center for the same seasons; and to produce "all correspondence with or concerning persons who presented speeches, addresses, panel discussions or topics" at the Center during those seasons. Trial by the Court (*Grant*, J.).

Over the objection of the defendant and subject to his exception, he was ordered to produce the guest registrations in question. His objection to disclosure of the names of employees was sustained; and the Court transferred without ruling the question of whether he may properly be required to produce the correspondence in question. The defendant's exceptions to rulings made in the course of the hearing, including the denial of his motion to dismiss the petition, were likewise reserved and transferred. Upon the defendant's refusal to comply with the order for the production of guest registrations, he was found and adjudged in contempt and ordered committed until he should purge himself of his contempt. Pending transfer of his exceptions he was admitted to bail. Other facts are stated in the opinion.

Louis C. Wyman, Attorney General (by brief and orally), pro se.

Royal W. France (of New York) and Nighswander, Lord & Bownes (Mr. France and Mr. Bownes orally), for the defendant.

Per Curiam. New Hampshire World Fellowship Center, Inc. is a New Hampshire corporation which maintains accommodations for the public at Albany, New Hampshire, during the summer season. By means of a sign near the highway the public is invited to stop there at specified rates. The defendant, a native of Indiana and resident of New Haven, Connecticut, has been executive director of the Center since 1953. He described the Center thus: "The World Fellowship of Faiths is a religious-motivated movement in the highest sense which seeks to bring together for fellowship and discussion the representatives of all faiths to the end that there may be peace, brotherhood and plenty for all men, women and children. It is a movement world-wide in its purpose."

In the course of interrogation by the Attorney General, both privately and before the Court, the defendant furnished the names of persons who spoke or conducted discussions at the Center in the course of the 1954 and 1955 seasons. Some twenty persons, all non-residents, were named by the witness as speakers in 1954, and over twenty-eight as speakers in 1955, a number of the latter being persons who had spoken in 1954. Information in the possession of the Attorney General concerning some of these persons and their connection with organizations or agencies considered to be communist-influenced or controlled, was contained in his report to the 1955 Legislature, which was before the Trial Court. Attorney General's Report on Subversive Activities, New Hampshire, 1955, pp. 136-156. Likewise, information concerning the defendant's connections with and support of similar organizations was before the Court in the same report. *Id.*, pp. 162-175.

The defendant in the course of the proceedings has placed no reliance upon the Fifth Amendment to the Constitution of the United States, or the Fifteenth Article of the New Hampshire Bill of Rights. He testified that he was not a Communist and never had been, and that none of the speakers at the Center, or its guests, were to his knowledge Communists, although he was aware of the connections held by many of them and frankly conceded his own activities in past years. He testified that at no time at the Center was there any advocacy of overthrow of the government by force or violence. A teacher by profession, and holding a Ph. D. degree in religious education from Yale, he described himself as a pacifist, and believer in a "form of Christian social society."

The witness testified that the Center could accommodate a maximum of sixty persons for a meal, and that the guest register for the 1954 season consisted of approximately three hundred sixty names and addresses, upon three by five cards, kept by him "in an office" in New Haven. He testified that the register for 1955, similarly kept, consisted

of about two hundred fifty names and addresses up to August 31, 1955, and "something over three hundred" for the summer. In refusing to produce the registrations, the witness characterized the inquiries of the Attorney General as an "attempt * * * to harass and intimidate me and to destroy the work of the World Fellowship of Faiths" and "a direct invasion of Christian conscience, and authority higher than that of the state." He refused upon the ground of conscience to give the names and addresses "of people who to my knowledge have never done anything to injure their country and who came to World Fellowship Center solely for vacation, recreation and friendly discussions", because to do so "would turn [him] into a contemptible informer" and he could not "involve innocent people in the Attorney General's network." Specifically he relied upon the First and Fourth Amendments to the Constitution of the United States and Articles 4th, 5th and 19th of the New Hampshire Bill of Rights.

In this court, the defendant has relied upon the same constitutional provisions. He contends that the investigation is unconstitutional and invalid by reason of the decision of the United States Supreme Court in *Pennsylvania* v. *Nelson*, 350 U. S. 497. He further contends that the information sought by the petitioner has not been shown to be relevant or pertinent to the subject of the investigation, that information before the Trial Court was incompetent because hearsay, and that the order committing him until he should purge himself of his contempt is invalid because indefinite and constituting cruel and unusual punishment, Constitution of the United States, Amend. VIII.

I. We are confronted at the outset by the contention that the investigation is shown to be invalid by the decision of the United States Supreme Court in *Pennsylvania* v. *Nelson*, *supra*. The same contention was advanced without success on motion for rehearing in *Wyman* v. *Sweezy*, 100 N. H. 103 and was strongly urged in *Kahn* v. *Wyman*,

100 N. H. 245. In the latter case, after full consideration the opinion was expressed that *Pennsylvania* v. *Nelson, supra,* did not preclude conduct of the "investigation of subversive activities within the state as distinct from * * * the prosecution of crimes." See also, *State* v. *Raley* (Ohio), 136 N. E. (2d) 295, 307. We see no present reason to recede from the views previously expressed.

In this connection it may be of interest to note that courts of other jurisdictions which have thought it necessary because of the *Pennsylvania* decision, *supra,* to dismiss prosecutions charging offenses against the state as well as the federal government have done so with reservation of the possibility that some "kind of sedition [might be] directed so exclusively against the State as to fall outside the sweep of * * * *Pennsylvania* v. *Nelson.*" *Commonwealth* v. *Gilbert* (Mass.), 134 N. E. (2d) 13, 16. See also, *Bradley* v. *Commonwealth* (Ky.), 291 S. W. 843, 849.

The circumstance that the usefulness of the investigation authorized by the resolutions of 1953 and 1955 has been diminished by the holding of the *Pennsylvania* case does not preclude continuance of the investigation for any purposes which may remain open. See 70 Harvard L. R. 95, 119, and footnote 148; Note, 31 Ind. L. J. 270, 281-5. The defendant's argument that the investigation is invalid cannot be adopted.

II. The witness Uphaus contends that the record fails to establish the relevancy of the evidence sought and ordered to be produced. It is fundamental that "the power exercised by a committee * * * must be within both the authority delegated to it and also within the competence of the [legislative body] to confer upon the committee." *United States* v. *Lamont,* 18 F. R. D. 27, *aff'd* 236 F. (2d) 312. Although as a result of *Pennsylvania* v. *Nelson, supra,* the State is without authority to prosecute offenses against the federal government, the power to investigate to determine "whether subversive persons as defined in said

[1951] act are presently located within this state" and whether "necessary legislation" should on that account be recommended (*Id.*) remains unimpaired. In this connection it may be well to observe that any questions of policy regarding this legislation are not for the court but belong exclusively to the Legislature and this distinction we are bound to respect. *Chronicle &c. Pub. Co.* v. *Attorney General*, 94 N. H. 148, 151. If through its legally authorized committee, the Attorney General (*Wyman* v. *Sweezy*, 100 N. H. 103, 105), the Legislature has asked for relevant information it is entitled to it. The test to determine whether the question is relevant is to inquire whether the "question is directed at a *possible* answer * * * which would be reasonably concerned with the main object of the investigation." *Wyman* v. *Sweezy*, *supra*, 106.

To establish relevancy in the case before us, the petitioner relied substantially upon the content of Uphaus' answer, and the information concerning him and speakers at the Center which is summarized in the report to the 1955 Legislature hereinbefore cited. The witness objected to the latter information as hearsay and incompetent. This objection has not been strongly urged before us and we have already rejected this argument in *Wyman* v. *Sweezy*, *supra*, decided since the hearings of the Attorney General in this case were held. The petitioner is clearly entitled to act upon "reasonable or reliable" information (Laws 1953, c. 307) which he may present to the Court, even though in hearsay form to establish the relevancy of his inquiry. *Wyman* v. *Sweezy*, *supra*, 111. As was observed in *United States* v. *Sacher*, 139 F. Supp. 855, 860, in considering a similar objection: "Obviously hearsay testimony * * * may sufficiently establish * * * pertinency of the questions here involved and the reasons for asking them."

The witness refuses to produce the guest registrations of World Fellowship, claiming in effect that they cannot *possibly* be reasonably concerned with "whether subversives are presently located within the state." Laws 1953,

p. 307. In determining the worth of this objection it appears necessary to detail some of the information disclosed by the record as being in the Attorney General's possession and bearing on whether the question as to the guest cards was relevant, since the context in which a question is asked may "indicate its relevancy * * *." *Wyman* v. *Sweezy*, *supra*, 107.

It appears that the witness, while he does not claim its protection here, has pleaded the Fifth Amendment when questioned about Communist matters by a congressional committee. He was a supporter of numerous organizations on the subversive list prepared by the House committee and was ousted in 1950 from the National Religious and Labor Foundation because, without its consent, he participated in Communist front activities. He attended the Warsaw Congress, which he said he knew was "Soviet influenced," at the invitation of a man who he admittedly knew had an international reputation as an open Communist. At this Congress the United States was attacked for allegedly using germ warfare in Korea.

Not less than nineteen speakers invited by Uphaus to talk at World Fellowship had either been members of the Communist Party or had connections or affiliations with it or with one or more of the organizations cited as subversive or Communist controlled in the United States Attorney General's list. His attorney asserts that the witness is "not at all concerned about his associations." In this connection it may be noted that throughout the examination of Uphaus the latter dwelt at length on the high ideals of his organization and his love for and belief in freedom. It is not for this court to pass on the truth of these representations. The committee was at liberty unquestionably to believe the witness. On the other hand, it was equally free to decide that Lord Salisbury's famous dictum might be applicable: "If you will study history, you will find that freedom, when it has been destroyed, has always been destroyed by those who shelter themselves under the cover

of its forms, and who speak its language with unparalleled eloquence and vigor."

In many instances Uphaus knew that the speakers at World Fellowship were members of one or more organizations cited as subversive by the United States Attorney General, but he claimed he did not know whether they or such persons as Paul Robeson with whom at times he had had correspondence, were Communists. However this may be, we have already held that whether persons "were or were not in fact Communist Party members or subversive persons is not decisive on the issue of relevancy." *Wyman* v. *Sweezy*, *supra*, 112. The Attorney General did not have to prove them Communists or subversives before he asked questions which were directed at a possible answer which would be "reasonably concerned with a main object of the investigation. *Id.*, 112. It is equally true that the Attorney General was not required to prove that World Fellowship was a subversive organization before making inquiry concerning it. *Id.*, 112.

Literature was distributed at the World Fellowship Center, examples being such material as a pamphlet by Molotov on Soviet policy and another on American-Russian friendship, the opening line of which was "Back to Stalingrad." However, as Mr. Uphaus himself said, it made no difference to him whether his guests believed in Communism or not. "It depends on his conduct while he is there" whether he is permitted to remain. The witness admits that he has had correspondence with persons who have been reputed or alleged to be Communist Party members. He also concedes that he said "a grace" which contained the following words, "God bless the revolution," but he claims this referred to "any revolution." As previously noted, belief in his statement was not compelled. A book available at the Center entitled "World Fellowship of Faith," contained an article which after supporting Communism reads: "If any government stands in the way that government must be overthrown." And again, there was a

statement to the effect, "If any people stand in the way, that people must be destroyed; * * * we must banish God from the skies and capitalists from the earth." The witness denies that he subscribes to "everything" in this publication.

In the light of this information and in this setting, Uphaus maintains that the guest registrations of World Fellowship cannot *possibly* contain any information bearing on whether, at the time of the investigation, subversive persons were "located within this state." *Wyman* v. *Sweezy*, 100 N. H. 103, 106. We believe this contention so unrelated to reality that it requires no further answer than the above recital of some of the information possessed by the Attorney General and the law applicable to the situation. Other authorities have reached the same conclusion in similar circumstances. See *Flaxer* v. *United States*, 235 F. (2d) 821; *Marshall* v. *United States*, 176 F. (2d) 473; *Morford* v. *United States*, 176 F. (2d) 54.

The case of *Rumely* v. *United States*, 197 F. (2d) 166, cert. denied, 334 U. S. 843, relied upon by the witness, so far from being an authority for his position, appears upon analysis to support the State's contention. In the *Rumely* case the investigation was concerned with lobbying and the question was whether a publisher of books must disclose the names of those who purchased them. The Court held that he did not have to and that the effort to influence public opinion upon national affairs was a protected freedom of speech which Congress could not abridge "unless urgent necessity in the public interest require it to do so." *Id.*, 173. The opinion went on to assert that "*on the contrary*," *Communism poses a threat to* "the security of this country," and for that reason Congress had "*the power and a duty* to inquire into Communism and the Communists." *Id.*, p. 173, citing *Barsky* v. *United States*, 167 F. (2d) 241, cert. denied, 334 U. S. 843. (Emphasis ours.)

In passing it may be well to note in commenting on the stress which the *Rumely* case lays on the "urgent neces-

sity" of investigating Communist activities as balanced against the right to freedom of speech, which the witness contends is controlling here, that our Legislature, in common with the federal government and most other states, has found this necessity exists to a degree so urgent, and has given the reasons so cogently, that it seems unnecessary to revert to them again, even in the most summary fashion. It may also be worth considering that for many years guest registrations in public places such as World Fellowship have been open to inspection "at all times" by "the sheriff, or his deputies and to any police officer." RSA 353.3. So far as appears in this State, no one has ever questioned the validity of such a law until the Communist issue arose.

In conclusion, we believe that the Legislature through its lawfully authorized committee, the Attorney General has demanded clearly relevant information. We hold it is entitled to it. Accordingly, the order of the Superior Court requiring the witness to produce the guest registrations is sustained and his exception is overruled.

III. The Trial Court transferred without ruling the "question of an order requiring the production of all correspondence with or concerning persons who presented speeches, addresses, panel discussions or topics at World Fellowship Inc. during the 1954 and 1955 seasons." The petitioner made it apparent at the trial that the subpoenas were intended to require production of correspondence conducted during the specified years only.

The witness testified that in 1954 there was correspondence with some fifteen to twenty persons, and that correspondence was conducted in 1955 with certain specified speakers. He testified that there "was never," in any of the correspondence, "anything suggesting that they discuss the overthrow of government by force or violence, or any topics relating to the overthrow of government by force and violence, or that they discuss Marxism or Leninism."

He declined to produce the requested correspondence, relying upon the defense of irrelevancy, and of violation of the First, Fourth, and Fourteenth Amendments to the Constitution of the United States, and Articles 4th, 5th and 19th of the New Hampshire Bill of Rights.

As was pointed out in *Wyman* v. *Sweezy, supra*, the legislative committee was not bound to accept the assurance of the witness that the correspondence in question contained nothing relevant. "The witness could not by his answer impose upon the investigating committee the burden of producing evidence that a doctrine aimed at the violent overthrow of government was in fact advocated before it could inquire of him concerning the lecture." *Id.*, 108.

The defendant vigorously objects to use made of the list of organizations cited by the United States Attorney General as subversive or communist controlled. Reliance is placed by him upon various holdings of the courts, establishing that connection with organizations so listed is not proof of guilt of subversion. We recognize that such a listing of itself establishes neither the character of the organization nor of persons associated with it. *Joint Anti-Fascist Refugee Comm.* v. *McGrath*, 341 U. S. 123, *supra*; *Barsky* v. *Board of Regents*, 347 U. S. 442, 456, 460. See also, *Wieman* v. *Updegraf*, 344 U. S. 183; *Schachtman* v. *Dulles*, 225 F. (2d) 938, 943; *Lawson* v. *Housing Authority*, 270 Wis. 269; *Hughes* v. *Board*, 141 N. Y. S. (2d) 392.

The question under our statute is not whether the listing by the Attorney General, admittedly hearsay as used in these proceedings, is competent evidence upon which the rights of individuals to employment or housing may be made to depend, but whether it constitutes information which the legislative committee may consider so far "reasonable or reliable" as to warrant further inquiry concerning the persons affected. The information in the petitioner's possession, including the listing by the Attorney General of organizations with which the defendant and speakers at the Center had connections, could be found

sufficiently reasonable or reliable to warrant further inquiry concerning their relationship with each other and their activities at the Center.

The possibility that the correspondence which it is sought to have produced may yield no information tending to show subversive purposes is not determinative of the relevancy of the request for its production. As was pointed out in *United States* v. *Orman*, 207 F. (2d) 148, 154, 155, the question of relevancy turns upon the substance of the question, and the possibility that the answer may be relevant, rather than upon the actual character of the answer when obtained. "Although his answer might have proved that he was not [linked with unlawful activity] it was not his right to deny this knowledge to the Committee." *Id.*, 155. See also, *Wyman* v. *Sweezy*, *supra*, 106, 112. We conclude that an order for production of the correspondence would not be invalid upon the ground that inquiry concerning it could not be found relevant.

The question remains whether such an order would violate constitutional rights under the First Amendment to the United States Constitution, or under the Fourth Amendment guaranteeing the right to be secure against "unreasonable searches and seizures," the former of which at least becomes applicable to state action by reason of the Fourteenth Amendment (*Gitlow* v. *New York*, 286 U. S. 652, 666); or rights, under the state Constitution, "of Conscience" (Art. 4th), of religious freedom (Art. 5th), and "to be secure from all unreasonable searches and seizures" (Art. 19th). We are of the opinion that the order would not violate such rights as a matter of law. By public exposition of their views, the defendant and the speakers in question chose overtly to place their views in the public eye. As against the expressed public interest in learning the nature and purposes of these expositions, based upon reasonable ground for believing that they may have been subversive in character, the witness or the speakers may not now enshroud their purposes in a cloak

of the "freedom of silence." See 47 Mich. L. R. 181, 213-222. Their right is to be free from "unreasonable" searches and seizures; and disclosure of the contents of their correspondence, like disclosure of the content of the witness Sweezy's lecture, may be compellable in the interest of satisfying the public need for disclosure of circumstances reasonably thought to be concerned with the object of the legislative investigation. *Wyman* v. *Sweezy, supra*, 106-109.

It is not to be disputed that the right to be exempt from arbitrary disclosures of personal and private affairs has always been regarded as of great importance. *Sinclair* v. *United States*, 279 U. S. 263, 292. See also, *Boyd* v. *United States*, 616, 621-622. An order for the production of papers under a subpoena *duces tecum* may constitute an unreasonable search and seizure. *Hale* v. *Henkel*, 201 U. S. 43, 76. But one which requires the production of relevant documents in furtherance of an authorized investigation is not such a search and seizure. See *United States* v. *Orman*, 207 F. (2d) 148, 158. It is the "unjustifiable intrusion" which violates the Fourth Amendment. See BRANDEIS, *J.* dissenting, in *Olmstead* v. *United States*, 277 U. S. 438, 478-479.

The principal issue with respect to the order sought in this case is whether production of the correspondence is relevant (*United States* v. *Orman, supra*, 158), and within reasonable and definite limits. *Oklahoma Press Publishing Co.* v. *Walling*, 327 U. S. 186, 196, 202-214. It might be thought that production of all correspondence requested, whether or not relating to proposed speaking engagements at the Center, would exceed the bounds of relevancy. On the other hand correspondence not directly concerned with such an engagement might be thought relevant to show the defendant's acquaintance with the speakers and their views and to shed light upon the probable nature of their discussions at the Center, some of which, according to the defend-

ant, consisted merely of telling "stories of their lives, their interests, and their problems." We therefore consider that an order to produce the correspondence specified by the subpoena could be found warranted by the record and would not be precluded as in violation of constitutional rights. *Barsky* v. *United States*, 167 F. (2d) 241.; *United States* v. *Orman, supra.*

The atmosphere of religion which surrounds the defendant's activities does not necessarily insulate them from investigation. The petitioner voices a purpose "to show that the advocacy of this so-called peace crusade is for the purpose of achieving a quicker and a cheaper occupation by the Soviet Union and Communism." Only by investigation of these activities can it be determined whether their purpose is what the committee claims, or whether the organization of which the defendant is director is in fact "an organization the bona fide purpose of which is to promote world peace * * * through constitutional means" which the statute excludes from the definition of a "foreign subversive organization" (RSA 588:1), and which the defendant claims the World Fellowship Center to be.

The exception to denial of the motion to dismiss is overruled. Upon remand the Trial Court may exercise its discretion with respect to the entry of an order to enforce the command of the subpoena for the production of correspondence.

IV. Finally the argument of the defendant that the order of committal for contempt constitutes an "indeterminate sentence" which is invalid because "cruel and unusual punishment" (Const. of the U. S., Amend. VIII; N. H. Const., Pt. 1, Art. 33rd) merits brief consideration. The function of the order entered below was not punishment in vindication of the public interest, but coercion to compel compliance with the prior order of the court to produce the registrations. *Penfield* v. *S. E. C.*, 330 U. S.

585, 593. See also, *United States* v. *United Mine Workers*, 330 U. S. 293, 302; *Yates* v. *United States*, 227 F. (2d) 844. Consequently statutes regulating the imposition of sentences for crime are inapplicable. The committal ordered it terminable upon the witness purging himself of contempt, and is not considered violative of the constitutional provisions relied upon by the defendant.

Remanded

DUNCAN and GOODNOW; *JJ.*, dissented in part.

DUNCAN, *J.*, dissenting in part: I concur in all of the foregoing opinion, except section II thereof. In my judgment the order requiring the defendant to produce the guest registrations should be vacated, and I therefore dissent from section II of the opinion for reasons hereinafter expressed.

As a result of *Pennsylvania* v. *Nelson*, 350 U. S. 497, the investigation authorized by the Legislature of this state is now limited to investigation of the question of "whether subversive persons as defined in said [1951] act are presently located within this state" (Laws 1953, c. 302) and whether "necessary legislation" should on that account be recommended. *Id.* The right of the committee "to exact testimony and to call for the production of documents must be found in this language." *United States* v. *Rumely*, 345 U. S. 441, 444. See also, *United States* v. *Kamin*, 136 F. Supp. 791; *United States* v. *Lamont*, 236 F. (2d) 312. The inquiry must therefore be pertinent to the issue of whether subversive persons "are presently located within this state" if it is to be permitted.

The committee's demand for production of the guest registration was supported by no claim for information in the possession of the committee concerning the guests (other than speakers) to indicate that their identification by name might relate to the subject matter of the investi-

gation. Cf. *Wyman* v. *Sweezy*, 100 N. H. 103, 112. The demand rested only upon the testimony of the witness as to the total number of guests for each session, in the course of which he stated that "very few" of the guests came from the State of New Hampshire.

In *Wyman* v. *Sweezy*, *supra*, it was pointed out that a question may not be sustained as relevant "on a mere possibility that it might lead to later relevant questions" (*Id.*, 106); and that the resolution authorizing the investigation "does not * * * authorize [the Attorney General] to examine private citizens indiscriminately in the mere hope of stumbling upon valuable information." *Id.*, 110. The information sought by the committee is not limited to the names of guests resident here (Cf. *Rumely* v. *United States*, 197 F. (2d) 166, 176) nor is it represented that the names cannot be obtained by less objectionable methods (see *Dennis* v. *United States*, 341 U. S. 494, 542; note, 56 Columbia L. Rev. 798, 801), or that production of the registrations may show the activities of the Center to be subversive. The conduct of the guests does not fall within the same category as that of the defendant and speakers at the Center, which has consisted of public endorsement and advocacy of ideas; and no suggestion has been made that by mere presence at the Center the guests became members of any organization, or advocated any action, lawful or otherwise. The committee seeks to know "who was there," in order by further examination to "find out what went on."

In view of the restricted purpose of the investigation, which is more closely confined than the purposes of the congressional investigations with the cases relied upon by the majority were concerned, production of the registrations is at best only a diffused and remote approach to the issue of whether subversive persons are "presently located" in New Hampshire, and can of itself become relevant only when coupled with other relevant information

concerning the guests which is not shown to be at hand. See *United States* v. *Mathues*, 33 F. (2d) 261; *United States* v. *Barry*, 29 F. (2d) 817; *Bowers* v. *United States*, 202 F. (2d) 452. See also, *Watkins* v. *United States*, 233 F. (2d) 681 at 694. "It is clear that authority over a subject matter does not import authority over all activities of persons concerned in that subject matter." *Rumely* v. *United States*, 197 F. (2d) 166, 176.

Enforcement of the subpoena goes beyond the inquiry held relevant in *Wyman* v. *Sweezy*, *supra*. It calls for the names of persons largely non-resident who assembled at different times, ostensibly to discuss topics of religious, political, and economic import. The "possible answer" will not of itself be concerned with the "main object of investigation." (*Id.*, 106.)

The order of the Court will operate as a deterrent upon the right of free speech and peaceable assembly guaranteed by the Constitution. *Wyman* v. *Sweezy*, *supra*, 113. See *Edgerton*, dissenting, *Barsky* v. *United States*, 167 F. (2d) 241, 254. Constitutional rights of the guests as well as of the witness are involved, and the Court need not restrict itself to consideration of the rights of the witness alone. See *Barrows* v. *Judson*, 346 U. S. 249; *Joint Anti-Fascist Refugee Comm.* v. *McGrath*, 341 U. S. 123, 187; Comment: Inquiry Into Political Activity, 65 Yale L. J. 1159, 1183-1189. The role of the guests with respect to the subject matter was not essentially different from that of the purchasers of pamphlets pertaining to national issues in the *Rumely* case *supra*. "On a record such as this so slim a semblance of pertinency is not enough to justify inquisition violative of the First Amendment." *Rumely* v. *United States*, 197 F. (2d) 166, 172. See also, *United States* v. *Rumely*, 345 U. S. 41, 46.

The record does not disclose such a public necessity for production of the registrations as to warrant abridgment of the privilege of the individuals concerned to exercise their civil liberties free from threatened involvement in the legislative investigation of subversive persons.

I am authorized to state that GOODNOW, *J.*, concurs in this dissent.

Opinion of Supreme Court of New Hampshire, Upon First Motion for Rehearing

#4533

WYMAN v. UPHAUS

(Decided February 28, 1957)

Motion for rehearing denied; opinion modified as follows:

On page 4 of the duplicated opinion, strike out the first sentence in the second paragraph from the bottom of the page which commences as follows: "It appears that the witness" etc.

Amend the second sentence in this paragraph to read as follows: "It appears that the witness was a supporter of numerous organizations on the subversive list prepared by the House Committee and was ousted in 1950 from the National Religious and Labor Foundation because, without its consent, he participated in Communist front activities."

March 27, 1957. WHEELER, *J.*, took no part in the consideration of this motion.

Laws of New Hampshire 1951

CHAPTER 193

AN ACT RELATIVE TO SUBVERSIVE ACTIVITIES

* * *

"Subversive organization" means any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or of any political subdivision of either of them, by force, or violence.

* * * *

"Subversive person" means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches, by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the state of New Hampshire, or any political subdivision of either of them, by force, or violence; or who is a member of a subversive organization or a foreign subversive organization.

* * *

It shall be a felony for any person knowingly and willfully to

* * *

assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization knowing said organization to be a subversive organization or a foreign subversive organization;

* * *

It shall be a felony for any person after August 1, 1951, to become, or after November 1, 1951 to remain a member of a subversive organization or a foreign subversive organization knowing said organization to be a subversive organization or foreign subversive organization. Any person who shall be convicted by a court of competent jurisdiction of violating this section shall be fined not more than five thousand dollars, or imprisoned for not more than five years, or both, at the discretion of the court.

New Hampshire Laws, 1953

JOINT RESOLUTION RELATING TO THE INVESTIGATION OF SUBVERSIVE ACTIVITIES

Resolved by the Senate and House of Representatives in General Court convened:

That the attorney general is hereby authorized and directed to make full and complete investigation with respect to violations of the subversive activities act of 1951 and to determine whether subversive persons as defined in said act are presently located within this state.

* * *

The attorney general is directed to proceed with criminal prosecutions under the subversive activities act whenever evidence presented to him in the course of the investigation indicates violations thereof, and he shall report to the 1955 session on the first day of its regular session the results of this investigation, together with his recommendations, if any, for necessary legislation.

* * *

[Approved June 17, 1953.]

New Hampshire Laws, 1955

CHAPTER 197.

AN ACT RELATIVE TO INVESTIGATION OF SUBVERSIVE ACTIVITIES

Be it enacted by the Senate and House of Representatives in General Court convened:

1. SUBVERSIVE INVESTIGATION. The investigation of subversive activities by the attorney general provided for by chapter 307 of the Laws of 1953, as continued by a resolution approved January 13, 1955, is hereby continued in full force and effect, in form, manner and authority as therein provided for the further period until June 30, 1957.

* * *

[Approved June 14, 1955.]

Order

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In the case of No. 4533 Wyman v. Uphaus the court upon November 15, 1957, made the following order:

Former result affirmed; case remanded.

Concord, November 15, 1957.

By order of the Court:

GEORGE O. SHOVAN,
Clerk.